in letter and spirit. According to *Equitable Loan & Security Co.* v. *Waring,* 117 Ga. 599, there are three essential ingredients in a lottery—consideration, prize and chance. All of these essentials are present in the principal case in spite of the fact that every member will obtain a suit in the end. Before each has paid his full $26.00 there is a hazard of a small amount to gain a large amount, and this makes it a criminal lottery, according to the case of *Johnson* v. *State,* 137 Ala. 101. Cases similar to the principal case are: *State* v. *Moren,* 48 Minn. 555, and *People* v. *McPhee,* 139 Mich. 687, 103 N. W. 174, 69 L. R. A. 505.

MANDAMUS—COURTS OF APPELLATE JURISDICTION—SUPERVISORY CONTROL.—Application was made to the Supreme Court for a mandamus to compel a circuit judge to set aside an order quashing a criminal complaint and directing him to reinstate the action and proceed with trial. *Held* (DODGE, J., dissenting), that the Supreme Court has superintending control in a criminal case even to review judicial action by mandamus. *State ex rel. Umbreit* v. *Helms, Circuit Judge* (1908), — Wis. —, 118 N. W. 158.

The principal case contains an elaborate exposition of the law of mandamus and attempts to settle the vexatious question so often arising, whether the supreme court would not only review by mandamus the action of an inferior court upon a preliminary question, but would also review any ruling in dismissal, which applied to criminal cases, would be a dismissal prior to the impanelling of a jury and the placing of a defendant in jeopardy. The opinions were given seriatim, the majority holding that the power granted under § 3, Art. 7, Const. Wis., declaring that "the Supreme Court shall have a general superintending control over all inferior courts; it shall have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari and other original and remedial writs and to hear and determine the same," applied to criminal as well as civil actions and should be followed in the principal case. This rule is asserted in *State ex rel. Bank* v. *Johnson,* 103 Wis. 614, 79 N. W. 1081, 51 L. R. A. 33; *State ex rel. McGovern,* — Wis. —, 116 N. W. 225; *State ex rel. Harris* v. *Laughlin,* 75 Mo. 358; *Benners* v. *State,* 124 Ala. 97, 26 South. 942; *People* v. *Smith,* 59 Mich. 529; BISHOP'S CRIM. PROC. (4th Ed.), § 1402. The fact that it becomes necessary to review judicial action is no insuperable obstacle to the exercise of the power of superintending control in a proper case. *State ex rel. Milwaukee* v. *Ludwig,* 106 Wis. 234, 82 N. W. 158; *State* v. *William,* — Wis. —, 116 N. W. 225. See extended note to *State ex rel. Bank* v. *Johnson,* 103 Wis. 591, in 51 L. R. A. 33. Opposed to the foregoing rule is the English view that if the writ is allowed it virtually exercises jurisdiction and tries the case upon an issue of law. *Reg.* v. *Brown,* 7 Ellis & B. 757. The general view is that the power of our state supreme courts is coterminous with the power vested in the court of the King's Bench, and such a question would be excluded from the superintending jurisdiction of that court. *Ex parte Lewis,* 21 Q. B. Div. 191; *Reg.* v. *Drayman,* 7 Ellis & B. 672; *Rex* v. *Justices,* 1 M. & S. 190. The reasoning of the court being that it is called upon to act where its decision is advisory. *Reg.* v. *Drayman* (supra). It

is a debatable question whether the delays and other perils attending review by the Supreme Court of the merits of a criminal charge when the Circuit Court has decided to dismiss the accused are not so dangerous to public welfare and oppressive to individuals as to overcome any possible harm likely to result from finality of the Circuit Court's decision. *Hampstead County* v. *Grave,* 44 Ark. 317; *Shine* v. *Kentucky Central R. Co.,* 85 Ky. 177, 3 S. W. 18; *Davis* v. *York County Com'rs.,* 63 Me. 396; *Nevada Cent. R. Co.* v. *Dist. Ct. of Lander County,* 21 Nev. 409, 32 Pac. 673; *State* v. *Hall,* 65 Tenn. 3.

MINES—OVERLYING AND UNDERLYING SEAMS—RIGHT TO SUPPORT.—The plaintiff was the lessee, with the ancillary powers to work and carry away, of a seam of coal. In the lease to the plaintiff the lessor reserved the right to himself and his assigns to enter upon the mining area of the plaintiff and to sink shafts and work and carry away the minerals from the mines underlying that of the plaintiff, with a further provision for compensation to the plaintiff for any damage to it caused by the working of the underlying mines. Defendant was the lessee of the next underlying seam of coal. The defendants worked their mine in a reasonable and careful manner, but the inevitable result of the defendant's working was to cause the plaintiff's seam to subside. This was an action to enjoin the defendants from so working their mine as to let down plaintiff's seam. *Held,* that the proviso in the plaintiff's lease did not expressly or by necessary implication reserve to the lessor or his assigns the right to withdraw support from the plaintiff's seam, and that the plaintiff was entitled to an injunction. *Butterly Co. Ltd.* v. *New Hucknall Colliery Co. Ltd.,* — Eng. — [1908], 2 Ch. 475.

It might seem that the lease which gave the lessor, or his assigns, the right to take all the minerals from the land under the plaintiff's mine and which provided for compensation to the plaintiff in case he sustained injury from the working of the under mines, gave the defendant the right to work the mine in a careful manner and if the inevitable result was the subsidence of the plaintiff's mine his remedy would be the money compensation. NEVILLE, J., in the principal case, said he would have difficulty in overcoming this argument, which was the argument of the defendant; if he was not controlled by former decisions. This is a point about which there has been much litigation in England and comparatively little in this country. The cases in the United States are in accord with the principal case. *Burgner* v. *Humphrey,* 41 Oh. St. 340; *Coleman* v. *Chadwick,* 80 Pa. St. 81. The earlier English cases are not easily reconcilable but the later decisions, among them, *Davis* v. *Treharne,* 6 A. C. 460 and *Love* v. *Bell,* 9 A. C. 286, are in harmony with the principal case which expressly follows the leading case of *Butterknowle Colliery Co.* v. *Bishop of Auckland, etc., Co.* [1906] A. C. 305. The right to subjacent support is a natural right and one which the courts will not say has been bartered away unless the intention to do so clearly appears. *Davis* v. *Treharne,* supra. The following reservation in a grant was held to take away the grantee's natural right to subjacent support, "reserving the coal and privileges above stated, and with a full and unconditional release